

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CBS BROADCASTING, INC.,
COLUMBIA PICTURES
INDUSTRIES, INC.,
DISNEY ENTERPRISES, INC.,
TWENTIETH CENTURY FOX FILM
CORPORATION, and WARNER BROS.
ENTERTAINMENT, INC.,

Plaintiffs,

V.

JOSEPH MORGANELLI,
BINNEWS, LLC, and DOES 1-8,

Defendants.

CIVIL ACTION NO. 3:06-CV-338-R

JURY TRIAL DEMANDED

**ANSWER OF DEFENDANTS
JOSEPH MORGANELLI and BINNEWS, LLC.**

Defendants Joseph Morganelli and Binnews, LLC respond to Plaintiffs' Complaint for Damages and Injunctive Relief as follows:

1. Defendants deny the allegations of paragraph 1 of the Complaint.
2. Defendant Binnews LLC admits that it operates a website. Defendants deny the remaining allegations of paragraph 2 of the Complaint.
3. Defendants deny the allegations of paragraph 3 of the Complaint.
4. Defendants deny the allegations of paragraph 4 of the Complaint.
5. Defendants deny the allegations of paragraph 5 of the Complaint.
6. Defendants deny the allegations of paragraph 6 of the Complaint.
7. Defendants deny the allegations of paragraph 7 of the Complaint.
8. Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 8 of the Complaint and on that basis deny the allegations.

9. Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 9 of the Complaint and on that basis deny the allegations.

10. Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 10 of the Complaint and on that basis deny the allegations.

11. Defendants deny the allegations of paragraph 11 of the Complaint.

12. Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 12 of the Complaint and on that basis deny the allegations.

13. Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 13 of the Complaint and on that basis deny the allegations.

14. Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 14 of the Complaint and on that basis deny the allegations.

15. Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 15 of the Complaint and on that basis deny the allegations.

16. Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 16 of the Complaint and on that basis deny the allegations.

17. Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 17 of the Complaint and on that basis deny the allegations.

18. Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 18 of the Complaint and on that basis deny the allegations.

19. Defendants admit that in the past Binnews, LLC operated a website that was hosted by ThePlanet.com. Defendants deny the remaining allegations of paragraph 19 of the Complaint.

20. Defendants admit that this case purports to be a copyright infringement action. Defendants deny the remaining allegations of paragraph 20 of the Complaint

21. Defendants deny the allegations of paragraph 21 of the Complaint.

22. Defendants deny the allegations of paragraph 22 of the Complaint.

23. Defendants deny the allegations of paragraph 23 of the Complaint.

24. Defendants admit that there are “Latest Releases” and “Hottest NZBs”

links on the website. Defendants deny the remaining allegations of paragraph 24.

25. Defendants deny the allegations of paragraph 25 of the Complaint.

26. Defendants deny the allegations of paragraph 26 of the Complaint.

27. Defendants admit that Binnews LLC charge users a fee and also sells advertising on its website. Defendants deny the remaining allegations of paragraph 27 of the Complaint.

28. Defendants deny the allegations of paragraph 28 of the Complaint.

29. Defendants deny the allegations of paragraph 29 of the Complaint.

30. Defendants deny the allegations of paragraph 30 of the Complaint.

31. Defendants deny the allegations of paragraph 31 of the Complaint.

32. Defendants deny the allegations of paragraph 32 of the Complaint.

33. Defendants deny the allegations of paragraph 33 of the Complaint.

34. Defendants deny the allegations of paragraph 34 of the Complaint.

35. Defendants deny the allegations of paragraph 35 of the Complaint.

36. Defendants deny the allegations of paragraph 36 of the Complaint.

37. Defendants deny the allegations of paragraph 37 of the Complaint.

38. Defendants deny the allegations of paragraph 38 of the Complaint.

39. Defendants deny the “prayer” paragraph contained in pages 11 and 12 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Plaintiffs have failed to join indispensable parties.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiffs' claims are barred by the doctrine of copyright misuse and unclean hands.

FOURTH AFFIRMATIVE DEFENSE

4. Plaintiffs' claims are barred because they cannot establish that the accused products or services are incapable of substantial non-infringing uses.

FIFTH AFFIRMATIVE DEFENSE

5. Plaintiffs' claims are barred by license, consent, acquiescence, waiver, and estoppel.

SIXTH AFFIRMATIVE DEFENSE

6. Plaintiffs' claims are barred by the Digital Millennium Copyright Act.

SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiffs' claims are barred by the doctrine of fair use.

EIGHTH AFFIRMATIVE DEFENSE

8. Plaintiffs' claims for statutory damages are barred by the U.S. Constitution.

NINTH AFFIRMATIVE DEFENSE

9. Plaintiffs' claims are barred for lack of subject matter jurisdiction to the extent Plaintiffs lack valid registrations of copyrights alleged in the Complaint.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiffs' claims are barred to the extent they have caused fraud upon the Copyright Office.

ELEVENTH AFFIRMATIVE DEFENSE

11. Plaintiffs' claims are barred by the first sale doctrine.

TWELFTH AFFIRMATIVE DEFENSE

12. Plaintiffs' claims are barred by their failure to mitigate damages.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Plaintiffs' claims are barred to the extent they have forfeited or abandoned copyright.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Plaintiffs' claims are barred because of deceptive and misleading advertising in connection with distribution of the copyrighted works.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Plaintiffs' claims are barred to the extent any persons, based on whose behavior Plaintiffs seek to hold Defendants liable, are innocent infringers.

DEMAND FOR JURY TRIAL

Defendants hereby demand a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE, Defendants ask the Court for judgment as follows:

A. That Plaintiffs take nothing by their Complaint;

B. That the Defendants be awarded their costs and attorneys fees with respect to this action; and

C. For other relief as the Court determines to be just and equitable.

Dated: July 7, 2006.

Respectfully submitted,

By: _____/s/

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of Defendants Joseph Morganelli and Binnews, LLC.'s Original Answer was served by U.S. mail, postage prepaid, and/or certified mail, return receipt requested, and/or by fax on the 7th day of July, 2006, to the following counsel:

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_____/s/
Charles S. Baker